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# IN THE
# COURT OF APPEALS OF INDIANA

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| MICHAEL RUCKLE, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 79A04-0701-CR-13 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald Johnson, Judge
Cause No. 79D01-0509-FC-79

**June 22, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Michael Ruckle appeals his conviction for Operating While Privileges Forfeited for Life,[1] a class C felony. Specifically, Ruckle argues that the trial court erroneously refused to admit evidence regarding information the arresting officer learned from the Bureau of Motor Vehicles (BMV) at the time of Ruckle's arrest. Finding that Ruckle has waived this argument, we affirm the judgment of the trial court.

## FACTS

On January 24, 2005, Ruckle was operating a motor vehicle in Tippecanoe County and was stopped by Tippecanoe County Sheriff's Deputy Aaron Gilman after the deputy observed Ruckle illegally pass another vehicle. The deputy ran a check on Ruckle's license, and the BMV database indicated that Ruckle had a conditional license. Deputy Gilman suspected that Ruckle had been drinking and conducted an investigation at the scene and at the jail, ultimately arresting Ruckle for operating while intoxicated.

On September 23, 2005, the State charged Ruckle with Count I, class C felony operating a motor vehicle while privileges are forfeited for life, Count II, class A misdemeanor operating a motor vehicle while intoxicated, Count III, class D felony operating a vehicle while intoxicated while having a prior conviction for operating a vehicle while intoxicated, and Count IV, being a habitual substance offender.

Prior to trial, the State moved in limine to exclude evidence regarding Deputy Gilman's computer check of Ruckle's BMV records. The trial court denied the motion.

[1] Ind. Code § 9-30-10-17.

Ruckle's trial was a bifurcated proceeding that took place on July 27, 2006. Counts I and II were tried to a jury, and Ruckle waived his right to a jury on the two remaining counts, which were tried to the bench. At trial, during the cross-examination of Deputy Gilman, Ruckle's counsel asked Gilman about the results of the computer check on Ruckle's BMV records. The State objected, arguing that the sought-after testimony would have been impermissible hearsay. The trial court sustained the State's objection and refused to permit the deputy to answer the question. The jury found Ruckle guilty of Counts I and II and the trial court found Ruckle guilty of Count III and found Ruckle to be a habitual substance offender. The trial court found that Count II merged into Count III.

On September 22, 2006, the trial court sentenced Ruckle to four years for operating while privileges are forfeited for life and to one and one-half years on operating a vehicle while intoxicated while having a prior conviction for operating a vehicle while intoxicated. The trial court also added a five-year enhancement based on its finding that Ruckle was a habitual substance offender. The sentences were ordered to be served consecutively with two years suspended to probation, amounting to an aggregate executed sentence of eight and one-half years. Ruckle now appeals.

## DISCUSSION AND DECISION

Ruckle argues that the trial court erroneously sustained the State's objection to Deputy Gilman's testimony about his computer check of Ruckle's BMV records. Specifically, Ruckle argues that he had a reasonable belief that his driving privileges had not been suspended for life, that he had a reinstated, conditional driver's license, and that the BMV's

computer records lend support to this argument.[2] He claims that the trial court erred by concluding that Deputy Gilman's testimony on this issue would have been impermissible hearsay, inasmuch as it was not offered for the truth of the matter asserted but to establish Ruckle's belief about the status of his license.

We need not reach the substance of Ruckle's argument, however, inasmuch as he failed to make an offer of proof at the time the trial court sustained the State's objection to the deputy's testimony. It is true, as Ruckle observes, that our Supreme Court has lessened the degree of formality required to make a proper offer of proof. See State v. Wilson, 836 N.E.2d 407, 409-10 (Ind. 2005) (holding that an offer of proof need only show "the facts sought to be proved, the relevance of that evidence, and the answer to any objection to exclusion of the evidence"). In no way, however, did the Wilson court suggest that a party is free to dispense with the offer of proof altogether. We acknowledge that here, the trial court was already familiar with the substance of the disputed testimony, inasmuch as that ground had been covered during the discussion surrounding the State's motion in limine. Even so, it was incumbent on Ruckle to make an offer of proof after the trial court sustained the State's objection. Having failed to do so, Ruckle has waived this issue on appeal.[3] Dylak v. State, 850 N.E.2d 401, 408 (Ind. Ct. App. 2006), trans. denied.[4]

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[2] We have held in the past that there may be circumstances under which a defendant is entitled to present evidence establishing that he did not know that his driving privileges had been suspended for life. Pierce v. State, 737 N.E.2d 1211, 1214 n.3 (Ind. Ct. App. 2000).

[3] Ruckle does not argue that the exclusion of this evidence constituted fundamental error.

[4] We observe that there is a not insignificant amount of evidence in the record supporting Ruckle's contention that he had a reasonable belief that his driving privileges had been reinstated. Most tellingly, he received a notification from the BMV on February 11, 2005—eight years after his driving privileges had been suspended

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

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for life—that his driving privileges would be suspended on March 13, 2005, if he failed to provide proof of financial responsibility. Appellant's App. p. 483. Moreover, Ruckle and his family members testified that he had gone to Indianapolis and procured a driver's license at some point after his driving privileges had been suspended for life. Id. at 282-87, 482. Ruckle does not, however, argue that there was insufficient evidence supporting his conviction. Moreover, this evidence was before the jury when it convicted him of operating while privileges were forefeited for life, and it would be improper for us to reweigh the evidence. Consequently, we merely find that Ruckle waived the hearsay issue and make no further findings herein.